

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION
No. 5:20-CV-514-BO

EDDIE HIGHTOWER,)
Plaintiff,)
)
v.)
)
CHEDDAR'S CASUAL CAFE, INC.,)
JOSEPH PANHOLZER, DARREN)
CORPORATION, GENE LEE,)
Defendants.)

O R D E R

This cause comes before the Court on defendants' motions to dismiss and plaintiff's motion to amend his complaint. The appropriate responses and replies have been filed, or the time for doing so has expired, and the matters are ripe for ruling.

Plaintiff, who proceeds *pro se*, instituted this action by filing a complaint against defendants on September 30, 2020. Invoking the Court's diversity jurisdiction, plaintiff alleges that he was negligently served undercooked and insect-infested food while dining at Cheddar's Casual Cafe with his family. On October 6, 2020, plaintiff was ordered to correct certain deficiencies in the filing of his complaint by filing a financial disclosure statement, civil cover sheet, and a notice of self-representation. Plaintiff was notified that failure to comply with the deficiency order could result in the dismissal of his complaint. Plaintiff did not correct the deficiencies within the time provided by the deficiency order.

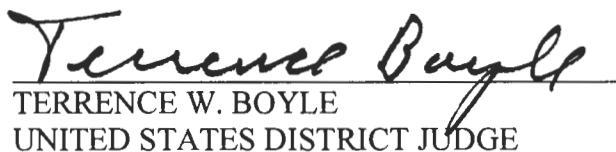
Defendants then appeared through counsel and moved to dismiss the complaint for failure to state a claim, Fed. R. Civ. P. 12(b)(6), and for failure to comply with the Court's order. Plaintiff thereafter moved to amend his complaint and argued that he had not received the Court's deficiency order.

Rule 15(a) of the Federal Rules of Civil Procedure requires that leave to amend a pleading be freely given. Accordingly, plaintiff's motion to amend his complaint is granted. Because the amended complaint supersedes the original complaint, defendants' motions to dismiss the original complaint are denied as moot. *See Fawzy v. Wauquiez Boats SNC*, 873 F.3d 451, 455 (4th Cir. 2017). Finally, plaintiff has corrected the deficiencies identified in the deficiency order, and the Court determines that his failure to do so in a timely manner amounts to excusable neglect.

CONCLUSION

For the foregoing reasons, plaintiff's motion to amend his complaint [DE 12] is GRANTED. The clerk is DIRECTED to file plaintiff's proposed amended complaint as of the date of entry of this order. Defendants' motions to dismiss the original complaint [DE 5,6,7,8] are DENIED AS MOOT.

SO ORDERED, this 10 day of March, 2021.


TERRENCE W. BOYLE
UNITED STATES DISTRICT JUDGE